

Gregory Mortenson
LATHAM & WATKINS LLP
1271 Avenue of the Americas
New York, NY 10020
Tel.: (212) 906-1200
Email: gregory.mortenson@lw.com

*Attorney for Plaintiff
Novartis Pharmaceuticals Corporation*

[Additional Counsel on Signature Page]

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

NOVARTIS PHARMACEUTICALS
CORPORATION,

Plaintiff,

v.

XAVIER BECERRA, in his official
capacity as Secretary of Health and
Human Services; CHIQUITA
BROOKS-LASURE, in her official
capacity as Administrator of Centers
for Medicare & Medicaid Services;
U.S. DEPARTMENT OF HEALTH
& HUMAN SERVICES; CENTERS
FOR MEDICARE & MEDICAID
SERVICES,

Defendants.

Case No. 3:23-CV-14221-ZNQ-DEA

Hon. Zahid N. Quraishi
Magistrate Judge Douglas E. Arpert

**JOINT MOTION TO SET
BRIEFING SCHEDULE**

Plaintiff and Defendants respectfully move jointly to set a briefing schedule governing the parties' forthcoming cross-motions for summary judgment, and for related relief requested below.

1. On September 1, 2023, Plaintiff Novartis Pharmaceuticals Corporation ("Novartis") filed this constitutional challenge to the Medicare "Drug Price Negotiation Program" in the Inflation Reduction Act ("IRA"). ECF 1. Novartis seeks declaratory and injunctive relief.

2. The parties have met and conferred and agree that this case presents legal questions about the constitutionality of a federal statute that can properly be resolved through dispositive motions, without the need for discovery. The parties intend to file cross-motions for summary judgment pursuant to Federal Rule of Civil Procedure 56.

3. The parties propose the following stipulated schedule for those cross-motions:

- Plaintiff will file a motion for summary judgment and supporting memorandum by November 22, 2023.
- Defendants will file a combined memorandum in support of their own cross-motion for summary judgment, and opposition to Plaintiff's motion, by January 12, 2024.
- Plaintiff will file a combined reply in support of its motion and opposition to Defendants' cross-motion by February 9, 2024.
- Defendants will file a reply in support of their cross-motion by March 6, 2024.

4. The parties respectfully request that the Court allow each brief described above to exceed this Court's default page limitations, due to the nature of this case and the consolidated briefing on parallel motions. Specifically, the parties request that the Court set the parties' page limits as follows:

- Plaintiff's motion: 40 pages
- Defendants' combined cross-motion and opposition: 40 pages
- Plaintiff's combined reply and opposition: 40 pages
- Defendants' reply: 25 pages

5. Because this case concerns the facial constitutionality of a federal statute, the parties further respectfully request that the Court dispense with Local Civil Rule 56.1(a)'s requirement that motions for summary judgment be accompanied by separate statements of material facts. The parties agree that all of the material facts in this matter concern the operation of the statutory regime and are set forth in official government documents. The parties therefore do not believe separate statements of material facts would assist the Court in deciding this matter.

6. For essentially the same reasons, the parties respectfully request that the Court also dispense with Defendants' obligation to file an Answer to the Complaint.

7. This Court granted similar joint scheduling requests in two other cases challenging the constitutionality of the IRA. *See* Scheduling Order, *Bristol Myers Squibb Company v. Becerra*, No. 3:23-cv-03335-ZNQ-JBD (July 31, 2023), ECF No. 35; Scheduling Order, *Janssen Pharmaceuticals, Inc. v. Becerra*, No. 3:23-cv-03818-ZNQ-JBD (July 31, 2023), ECF No. 14.

* * *

For the foregoing reasons, the parties request that the Court: (1) order the above stipulated schedule for briefing on the parties' forthcoming cross-motions for summary judgment; (2) grant the parties' joint request to extend page limits for all briefs identified in that schedule; (3) dispense with the parties' obligation to file statements of material facts with their respective cross-motions for summary judgment; and (4) dispense with Defendants' obligation to file an Answer to the Complaint.

Dated: October 25, 2023

Respectfully submitted,

s/ Stephen M. Pezzi

STEPHEN M. PEZZI

Senior Trial Counsel

ALEXANDER V. SVERDLOV

CHRISTINE L. COOGLE

Trial Attorneys

United States Department of Justice Civil

Division, Federal Programs Branch

1100 L Street, NW

Washington, DC 20005

Tel: (202) 305-8576

stephen.pezzi@usdoj.gov

alexander.v.sverdlov@usdoj.gov

christine.l.coogle@usdoj.gov

Attorneys for Defendants

s/ Gregory Mortenson

Gregory Mortenson

Samir Deger-Sen (*pro hac vice*
pending)

LATHAM & WATKINS LLP

1271 Avenue of the Americas

New York, NY 10020

Tel: (212) 906-1200

gregory.mortenson@lw.com

Daniel Meron (*pro hac vice*
pending)

Charles S. Dameron (*pro hac*
vice pending)

Cherish A. Drain (*pro hac vice*
pending)

Graham B. Haviland (*pro hac*
vice pending)

Christina R. Gay (*pro hac vice*
pending)

LATHAM & WATKINS LLP

555 Eleventh Street, NW

Suite 1000

Washington, D.C. 20004-1304

Tel: (202) 637-2200

daniel.meron@lw.com

charles.dameron@lw.com

cherish.drain@lw.com

graham.haviland@lw.com

christina.gay@lw.com

Attorneys for Plaintiff